IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.2360 OF 2002

Shri C. R. Dhuri & ors. ...Petitioners.

Versus

National Textile Corporation (M.N.) Ltd. & Ors. ...Respondents.

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Mr. N. M. Ganguli for the Petitioners.
Mrs.Meena Doshi for the Respondents.

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CORAM : DR. D.Y. CHANDRACHUD, J.

August 17, 2006.

ORAL JUDGMENT:

I

The Petitioners challenged their retirement at the age of 58 by the National Textile Corporation in a complaint under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The complaint having been dismissed, these proceedings were instituted. The Petition was allowed by a Learned Single Judge of this Court, on 12th April 2006. The matter having been carried in appeal, a Division Bench of this Court by its order dated 19th July 2006 set aside the

order and remitted the matter back for fresh disposal since the judgment of the Learned Single Judge had not considered a decision of the Division Bench dated 14th February 2003. The judgment of the Division Bench in **National Textile Corporation Ltd. (Pattern) Employees Association vs. Union of India,** had upheld the decision of the Corporation to roll back the age of retirement from 60 years to 58 years. Accordingly, the petition has been placed for hearing and final disposal and arguments have been addressed before the Court by Counsel for the contesting parties. For the reasons which shall now be indicated in these proceedings, I have come to the conclusion that the grievance of the Petitioners is lacking in merit and that the petition is liable to be dismissed.

II

2. The three Petitioners were complainants before the Industrial Court in a complaint that was instituted on 21st December 2001. The grievance of the Petitioners was that they were employed by the India United Mills prior to the take over of the Mills under the Sick Textile Undertakings (Nationalization) Act, 1974. Prior to

nationalization, the service conditions of the workmen were governed by settlements. Under a settlement of 21st February 1956, the age of retirement was sixty years subject to the right of management to retire an employee at fifty five on grounds of age or infirmity. After nationalization, a settlement was entered into on 10th May 1975. Clause 20 of the settlement provided that all other terms and conditions of service in respect of pay, Dearness Allowance and other privileges shall continue as they existed under pre-nationalisation staff agreements, awards etc. According to the Petitioners, their age of superannuation under the settlement of 1956 was 60 years. The Petitioners claimed that after the recommendations of the Third Pay Commission, the question of revising the pay scales of employees of Government of India Undertakings was taken up and the National Textile Corporation (NTC) decided to revise pay scales in line with the directions of the Central Government. Individual memoranda were addressed to each of the employees including the complainants. But, according to the Complainants, they accepted the revision of pay subject to a reservation in regard to the age of retirement which according to them, would continue at 60 years. The grievance of the

Petitioners before the Industrial Court was that though the age of retirement that was applicable to them was 60 years, they were being retired at the age of 58.

3. A Written Statement was filed on behalf of NTC in which the contention of the Corporation was that though the age of retirement had initially been extended from 58 years to 60 years, the Corporation took a decision to roll back the age of retirement once again to 58 years in October 2000. The Corporation specifically disputed that the Petitioners were workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947. According to the Corporation, the Petitioners were Assistant Officers discharging duties of an Administrative and Executive nature and since they were drawing a salary in excess of Rs.1600/-, they were not workmen as defined under Section 2(s). Consequently, it was submitted that they did not fulfill the definition of the term 'employee' under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Corporation set up the case that the settlement dated 10th May 1975 that was entered into between the

management and the National Union of Commercial Employees was applicable to employees who are covered under the Industrial Disputes Act, 1947. However, since the Petitioners were not workmen under Section 2(s), their services were governed by rules and regulations framed by the National Textile Corporation (North Maharashtra) Ltd. The case of the management was that the Complainant-Workmen had accepted NTC pay scales together with NTC Service conditions and that they were hence not governed by the industrial settlement of 10th May 1975. According to the management, once the Complainant-workmen had chosen to opt for NTC grades, it would not be open to them to pick and choose only those amongst the service conditions that were considered favourable. In the circumstances, it was submitted that the age of retirement that was applicable to the Complainant-workmen was that which was governed by the rules and regulations of the Corporation and the Corporation having decided to roll back the age of superannuation from 60 years to 58 years that would apply to the complainants who are in receipt of NTC pay scales.

4. Evidence was adduced on behalf of the complainant-workmen by the Second Petitioner Shri Hemant Raut. In the course of the deposition, the witness admitted that the complaint was confined to the three Complainants. The foundation of the case of the Complainant-workmen was the agreement dated 10th May 1975 that was entered into between the management and the Union. The Industrial Court by its judgment and order dated 29th June 2002 dismissed the complaint. This petition was admitted on 9th September 2002. In the meantime, a petition filed by the National Textile Corporation Ltd. (Pattern) Employees Association, challenging the decision of the Corporation to roll back the age of superannuation from 60 years to 58 years was dismissed by a Division Bench of this Court on 14th February 2003. As noted earlier, this petition was initially allowed by the Learned Single Judge on 12th April 2006. The order of the Learned Single Judge was, however, set aside in appeal and the proceedings were restored for fresh consideration since the effect of the order of the Division Bench upholding the reduction of the age of retirement had not been considered.

III

5. Counsel appearing on behalf of the Petitioners submitted that the three Complainant-workmen were engaged in the clerical cadre as employees at the Head Office. The industrial settlement dated 21st February 1956 that was entered into between the pre-nationalisation Company and the National Union of Commercial Employees prescribed the age of retirement at 60 years. After nationalisation took place, a fresh settlement was entered into on 10th May 1975 under which the age of retirement was not disturbed. When the Complainants were granted fitment under NTC pay scales in 1984, the three Petitioners had accepted that exercise with an express reservation in regard to the age of superannuation. Hence, it was submitted that the age of superannuation that was applicable to the Petitioners was 58 years under the industrial settlements and that this was consistent with the provisions of Model Standing Order 25 applicable to clerical employees. The submission that has been urged before the Court is that it was not open to the management to alter the age of retirement that was governed by the industrial settlements and the Model Standing Orders.

6. On the other hand, on behalf of the management, it has been submitted that a specific defence was raised that none of the three Petitioners was a workman under Section 2(s) of the Industrial Disputes Act, 1947. The onus lay on the complainants to establish that they were workmen within the meaning of Section 2(s) and therefore, 'employees' as defined under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Petitioners, it is submitted, failed to discharge the onus. Counsel appearing on behalf of the management submitted that the workmen at the Head Office were governed by the Industrial Disputes Act, 1947 and to them, the Standing Orders framed under the Industrial Employment Standing Orders Act, 1946 applied. On the other hand, the workmen engaged at the Mill level were governed by the Bombay Industrial Relations Act, 1946 and to them the Standing Orders framed under the aforesaid Act applied. NTC grade employees, it was submitted by Counsel, were appointed by direct recruitment or by promotion. Upon promotion, such employees came to be governed by NTC scales of pay and by the service conditions attached

therewith. In the present case, it has been submitted that the workmen were given an option in 1984 to be governed by NTC pay scales. The workmen accepted the option, but at the same time sought to reject the applicability of the age of retirement that was uniformly made applicable to all employees governed by NTC pay scales. After the recommendations of the Fifth Pay Commission were implemented, the benefit thereof was given to all the NTC grade employees including the Petitioners. All the Petitioners were informed that they would be governed by the applicable rules and regulations of the Corporation and the Petitioners expressly agreed thereto. In these circumstances, it was submitted that having accepted the benefit of NTC pay scales, the Petitioners are estopped from contending that they were entitled to the benefit of the age of retirement as stipulated in the settlement of 1975, particularly having regard to the fact that the Petitioners did not discharge the onus of establishing that they were workmen under Section 2(s) of the Industrial Disputes Act, 1947.

IV

7. While evaluating the merits of the rival submissions, it would be necessary to advert to some of the undisputed facts. India United Mills Units 1 to 6 originally belonged to E.D. Sassoon & Co. Ltd. After Independence, the Mills came to be sold and then acquired the name by which they were associated at the time of nationalisation. All the six Mills of India United Mills Co. Ltd. started making losses. The Mills were taken over by the Government of India and came to be transferred to NTC under the Sick Textile Undertakings (Nationalisation) Act, 1974. Prior to nationalisation, industrial settlements had been entered into between the erstwhile management and the Union representing the employees. On 21st February 1956 there was a settlement between the management and the National Union of Commercial Employees under which the age of retirement was fixed at 60 years subject to the stipulation that the management would be entitled to retire an employee after the age of 55 if he was unable to perform his duties properly because of age or infirmity. Post nationalisation, a Memorandum of Settlement was arrived at on 10th May 1975 under which it was provided that the other terms and conditions of service, pay, dearness allowance and

other privileges shall continue as they existed under the applicable agreements and awards.

8. Section 14 of the Nationalisation Act provided for a take over of the employees of the erstwhile Sick Textile Undertaking by NTC subject to the same rights and privileges as to pension, gratuity and other matters as would have been admissible, had the Undertaking not been transferred to NTC. The existing terms and conditions there, therefore, protected until they were duly altered by NTC. Section 14 of the Nationalisation Act provides as under :

> "14. Employment of certain employees to continue. -(1) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947 and has been immediately before the appointed day, employed in a sick textile undertaking shall become, on and from the appointed day, an employee of the National Textile Corporation, and shall hold office or service in the National Textile Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such sick textile undertaking had not been transferred to, and vested in the National Textile Corporation, and shall continue to do so unless and until his employment in the employment are duly terminated or until his remuneration, terms and conditions of employment are duly altered by the National Textile Corporation.
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> -(2) Every person who is not a workman within the

meaning of the Industrial Disputes Act, 1947 and who has been immediately before the appointed day employed in a sick textile undertaking shall, in so far as such person is employed in connection with the sick textile undertaking which has vested in the National Textile Corporation, become, as from the appointed day, an employee of the National Textile Corporation and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same under the sick textile undertaking if it had not vested in the National Textile Corporation and shall continue to do so unless and until his employment in the National Textile Corporation is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the National Textile Corporation.

Provided that in respect of any sick textile undertaking the management of which could not be taken over by the Central Government under the Sick Textile Undertakings (Taking Over of Management) Act, 1972 by reason of any decree, order or injunction of any Court, any agent, director (including a managing or whole-time director, by whatever name called) or manager shall not become an employee of the National Textile Corporation.

-(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force the transfer of the services of any officer or other person employed in a sick textile undertaking to the National Textile Corporation shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any Court, Tribunal or other authority.

-(4) Where, under the terms of any contract of service or otherwise, any person whose services become

> terminated or whose services become transferred to the National Textile Corporation by reason of the provisions of this Act is entitled to any arrears of salary or wages or any payment for any leave not availed of or other payment, not being payment by way of gratuity or pension, such person may, except to the extent such liability has been taken over the Central Government under Section 5 enforce his claim against the owner of the sick textile undertaking but not against the Central Government or the National Textile Corporation."

9. In 1998, the Fifth Pay Commission that was appointed by the Government of India, recommended that the age of retirement of employees below the Board level in Government and Public Sector Undertakings should be raised from 58 years to 60 years. An Office Memorandum was issued on 19th May 1998 by the Ministry of Industries in the Department of Public Enterprises of the Government of India directing the Central Public Sector Enterprises to enhance the age of retirement from 58 years to 60 years for employees below the Board level.

10. Now, in so far as NTC was concerned, it had on the one hand protected the conditions of service of the erstwhile pre-nationalisation employees unless those were duly altered in

accordance with law. On the date of nationalisation, the age of superannuation in regard to the workmen whose services were taken over was fixed by settlement at 60 years. NTC also recruited certain employees after nationalisation in whose case the age of superannuation was 58 years. Therefore, for a certain period of time two sets of retirement ages prevailed in the Corporation. After the Central Government took a decision to raise the age of superannuation from 58 years to 60 years following the recommendations of the Fifth Pay Commission, the Board of Directors of NTC passed a resolution on 26th May 1998 raising the age of superannuation to 60 years. On the passing of the resolution, the recruitment and promotion rules came to be amended in respect of all employees below the Board level. Employees governed by the Industrial Disputes Act, 1947, the Bombay Industrial Relations Act, 1946 and the Standing Orders framed thereunder would also continue to be governed by the existing age of retirement of 60 years. Subsequently, the Department of Public Sector Enterprises in the Government of India, by a Memorandum dated 21st August 1998, informed Public Sector Enterprises that if they did not wish to

increase the age of retirement, they should seek a specific exemption from the operation of the Union Government's decision dated 19th May 1998. The Board of Directors of NTC decided to move the Government of India for the grant of such an exemption. Accordingly, the Central Government was moved. The Government of India, by a communication dated 3rd October 2000 informed NTC that its request for a change in the age of retirement was approved by the Central Government. An amendment was thereafter carried out to the Recruitment and Promotion Rules of 1982 and the age of superannuation thereupon stood reduced to 58 years.

11. The reduction of the age of retirement from 60 years to 58 years was challenged before a Division Bench of this Court by the National Textile Corporation Ltd. (Pattern) Employees' Association. The Petition was dismissed by a Division Bench consisting of the Hon'ble Mr.Justice R.M. Lodha and the Hon'ble Mrs.Justice Nishita Mhatre by a judgment and order dated 14th February 2003. While construing the provisions of Section 14(2) of the Nationalisation Act, 1974, the Division Bench held as follows :

> "Section 14 of the Nationalization Act of 1995 is pari materia with section 14 of the Act of 1974. Now under Section 14(2) as seen above, the terms and conditions of employment of an employee who is not covered by the Industrial Disputes Act, 1947 and who was employed in the textile undertaking which was nationalised, remain the same unless the terms and conditions of employment are 'duly altered' by the National Textile Corporation. 'Duly altered' would mean that the service conditions are altered in accordance with law and within the parameters of law. The Petitioners here have not been able to demonstrate that the service conditions of the employees who were employed in the mills, which were nationalised, have not been altered in accordance with law. Merely because there was a reduction in the age of retirement would not by itself indicate that the service conditions have not been duly altered. The term 'duly altered' used in sub section (1) of Section 14 would entail an alteration in the service conditions by amending the standing orders governing the workmen, in accordance with law. This alteration would have to be by consensus between the National Textile Corporation and the workmen. Sub section (2) seen in juxtaposition with sub section (1) reveals that alteration in the service conditions of the other employees including below board level employees need not be consensual and can be unilaterally effected. The only prerequisite is that the change must be in accordance with law." (emphasis supplied).

The Division Bench followed the decision of the Supreme Court in **K. Nagaraj vs. State of Andhra Pradesh**[1] and **B. Prabhakar Rao vs. State of Andhra Pradesh**[2] and held that the roll back of the age of

1 (1985) 1 SCC 523
2 (1985) Supp SCC 432

retirement was not effected arbitrarily. The Division Bench noted that the affidavit filed on behalf of the Corporation showed that the rolling back of the age of retirement to 58 years would save an amount of Rs. 19.63 lakhs per month in respect of 196 employees who were immediately due for retirement on 31st January 2001. Moreover, the financial burden that could be reduced would help in easing the financial crisis being faced by the Corporation in view of the fact that the National Textile Corporation SM Ltd. and National Textile Corporation MN Ltd. had been declared sick industries under the Sick Industrial Companies (Special Provisions) Act, 1985. The Division Bench held that no case of malafides had been made out.

12. The judgment of the Division Bench of this Court notes the distinction between the service conditions of those categories of employees who are governed by the Industrial Disputes Act, 1947 and the Bombay Industrial Relations Act, 1946 on the one hand, and the service conditions applicable to other employees. Workmen were governed by sub-section (1) of Section 14 of the Nationalisation Act while other employees who were not workmen within the meaning of

the Industrial Disputes Act, 1947 were governed by sub-Section (2) of Section 14. The Division Bench observed that in so far as the workmen were concerned, the alteration of service conditions would have to be by amending the Standing Orders which were part of the conditions of service, while in the case of other employees, the only prerequisite was that the change must be in accordance with law. The first paragraph of the judgment of the Division Bench shows that the grievance before the Court was with respect to the managerial staff. The Division Bench has in clear and categoric terms emphasised the distinction between the protection granted by the law to the service conditions of workmen, as distinguished from the managerial staff.

13. Now, in so far as employees falling under the definition of workmen are concerned, there was no doubt that under the industrial settlement dated 21st February 1956, the age of retirement was fixed at 60 years subject to right of the management to retire an employee at the age of 55 if the employee was unable to perform duties due to age or infirmity. The existing conditions of service were protected by

the provisions of Section 14(2) of the Nationalisation Act. The settlement that was entered into on 10th May 1975 did not disturb the position under the earlier settlement. On 27th May 1998, when the Corporation implemented the Central Government's decision to enhance the age of retirement from 58 years to 60 years, its circular clearly mentioned that this enhancement was applicable to “below board level employees” who are not governed by the provisions of the BIR Act, Standing Orders etc. Obviously, the workmen of the Corporation were governed by industrial settlements and if an alteration had to be made in the existing terms and conditions of service that would be required to be brought about in accordance with law. The Division Bench has noted that even when the Board of Directors of NTC decided to roll back the age of retirement from 60 years to 58 years, the age of superannuation of workmen governed by settlements or Standing Orders was to remain unaffected :

> “However, after the clarification was issued, the Board took an independent decision on merits and decided that the retirement age of those employees who were governed by the Standing Orders or agreements under the Industrial Disputes Act or the Bombay Industrial Relations Act would continue to be governed by them and that the retirement age in respect of other employees was required to be reduced.”

14. The Industrial settlement of 21st February 1956 provided that it would remain in force for at least one year from the date of the signing of the agreement and would continue in force until terminated by the parties. Under Section 19 of the Industrial Disputes Act, 1947, an industrial settlement continues to remain binding (i) during the term of the settlement; (ii) thereafter upon its expiry; and (iii) even after a notice of termination is given until it is replaced by a settlement or, as the case may be, an award of the Industrial Tribunal. This is a settled position in law in view of the judgment of the Supreme Court in **LIC of India vs. D.J. Bahadur.**[3] The Supreme Court has held that until a new settlement or award replaces the previous settlement or award, the same will regulate the relations of the parties. The Industrial Court in the present case in the course of its judgment adopted the line of reasoning to the effect that the settlement of 1956 was valid only for one year and that the settlement of 1975 made no reference to the earlier settlement. This reasoning, overlooks the plain implication of Section 19 of the Industrial Disputes Act, 1947. The settlement of 1956 would continue to bind the management as well as

3 AIR1980 SC 2181

the workmen who were covered by the settlement until the settlement was in fact substituted by a fresh settlement or an award. Indeed, Section 14(1) of the Nationalisation Act reaffirms that principle. An administrative decision of the management cannot, and could not have invalidated an industrial settlement whose sanctity is protected Sections 18 and 19 of the Industrial Disputes Act, 1947.

V

15. In so far as the individual cases of the three Petitioners are concerned, the material that has been placed on the record demonstrates that in 1984 the management had carried out an exercise of fitment in NTC pay scales together with NTC service conditions. The three workmen accepted their fitment but at the same time reserved their rights in so far as the age of superannuation was concerned. There is merit in the submission urged on behalf of the management that it was not open to the workmen to pick and choose those terms and conditions which were offered by the management, which were advantageous or beneficial, while rejecting the overall package of service conditions. No doubt, it was open to the workmen

to assert that in so far as the age of superannuation is concerned, that would be governed by the age of 60 that was fixed by the pre-nationalisation settlement. However, it was clearly not open to them to partially accept the package of fitment in NTC scales while at the same time refusing to accept the applicability of the service conditions. Be that as it may, the material that has been placed before the Court shows that on 20th January 1998, the management again issued individual letters to the three Petitioners, amongst others, informing them of the revised pay scales that were to be effected from 1st January 1996 following the implementation of the recommendations of the High Powered Pay Committee of the Corporation. The grant of revised pay scales in 1998 was again made in terms of the provisions of the guidelines and rules in force and the Petitioners were informed that they would be governed by these guidelines and rules as and when amended. It is admitted that each of the three Petitioners accepted the benefits of the revised pay scales upon implementation of the recommendations of the Fifth Pay Commission. The Petitioners agreed to the conditions set out in the letter dated 20th January 1998. The Petitioners were thereafter

informed by Exh.C-10 that their age of retirement has been enhanced from 58 years to 60 years following the decision of the Corporation. In these circumstances, it is evident from the material on the record that, in any event, after the implementation of the recommendations of the Fifth Pay Commission with effect from 1st January 1996, each of the Petitioners unreservedly accepted the benefit of NTC pay scales and subjected themselves to the discipline of the rules in force, as amended from time to time.

16. The basis on which the Petitioners moved the Industrial Court was that they continued to be governed by the industrial settlement under which the age of retirement was fixed at 60 years. The Corporation specifically raised the defence in the Written Statement to the effect that the three Petitioners were not workmen under Section 2(s) of the Industrial Disputes Act, 1947. Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, defines the expression “employee” to mean a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947 where that Act applies. The Corporation had in its

Written Statement clearly placed the Petitioners upon notice of its defence that they were not workmen within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947. In view of the decision of the Constitution Bench of the Supreme Court in **H.R. Adyanthaya vs. Sandoz (India) Ltd.**[4] it is a settled principle of law that in order to fulfill the definition of the expression 'workman' under Section 2(s) it is not enough to demonstrate that the exceptions that are carved out to the definition are not attracted but it is necessary to establish that the employee is a workman as defined in the substantive part of Section 2(s). The Constitution Bench has held thus :

> "Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories viz., manual, unskilled, skilled, technical, operational, or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation."

In **Mukesh Tripathi vs. Senior Divisional Manager, LIC**,[5] a Bench of three Learned judges of the Supreme Court, following the decision in **H.R. Adyanthaya** (supra), held that the onus was on the appellant

4 (1994) 5 SCC 737
5 (2004) 8 SCC 387

who had moved the Industrial Tribunal to establish that he was a workman. Hon'ble Mr. Justice S.B. Sinha, speaking for the Court, held thus:

> "A "workman" within the meaning of section 2(s) of the Industrial Disputes Act, 1947 must not only establish that he is not covered by the provisions of the Apprentices Act but must further establish that he is employed in the establishment for the purpose of doing any work contemplated in the definition."

In the present case, a perusal of the evidence on the record would demonstrate that none of the Petitioners has discharged the onus of proving that they were workmen within the substantive part of the definition contained in Section 2(s) of the Industrial Disputes Act, 1947. The burden was clearly on the Petitioners to establish, in the first instance, that they were employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. The onus of proving that case was on the Petitioners. As already noted earlier, the Petitioners were clearly placed on notice by the management of its defence that they were not workmen within the meaning of Section 2(s). Despite this, the Petitioners failed to discharge the burden. On behalf of the Petitioners it was only the

Second Petitioner who deposed in evidence and his deposition is completely silent in regard to whether the nature of the work was within the substantive part of Section 2(s). This failure on the part of the Petitioners to discharge the burden of establishing that they were workmen must be read in juxtaposition with the fact that each of the three Petitioners accepted the benefit of the revised terms and conditions of service with effect from 1st January 1996 on the implementation of the report of the High Powered Pay Committee, without reservation. None of the three Petitioners considered it necessary to express any reservation even of the nature that they had expressed in 1984 in regard to the age of superannuation. The Petitioners, therefore, in my view failed to discharge the burden of establishing that when the complaint was instituted, they were still entitled to the benefit of the industrial settlement of 1956 or 1975 and to the benefit of Model Standing Orders under which the age of retirement was stipulated in respect of persons who belong to the category of workmen. The Industrial Court has in fact, noted this failure on the part of the Petitioners to discharge the onus that was cast upon them and concluded in para 19 of its judgment and order

that unless the Petitioners demonstrate before the Court that they were employees within the meaning of Section 3(5) of the Act, the jurisdiction of the Industrial Tribunal to entertain the complaint under Section 28 was clearly lacking.

17. In these circumstances, and for the reasons which are indicated in this judgment, I am of the view that the Petitioners are not entitled to relief under Article 226 of the Constitution. The Petition shall accordingly stand dismissed.

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